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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,453	07/18/2006	Matthew David Osborne	BJS-620-412	4519

  

23117	7590	10/26/2011
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EXAMINER	
MARVICH, MARIA	

  

ART UNIT	PAPER NUMBER
1633	

  

MAIL DATE	DELIVERY MODE
10/26/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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OCT 26 2011

NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON VA 22203

In re Application of: :  
Osborne et al. :  
Serial No.: 10/567,453 : PETITION DECISION  
Filed: February 7, 2006 :  
Attorney Docket No.: BJS-620-412 :

This is in response to the "request" filed October 13, 2011, which request is being treated as a petition under 37 CFR § 1.181, requesting a new action and consideration of evidence of record.

#### BACKGROUND

Relevant parts of the prosecution history are summarized below.

The examiner mailed to applicants a non-final Office action on October 5, 2011. Claims 1, 4, 9, 10, 13-16, 33, 36, 41 and 45-50 were pending and were rejected. Claims 1, 4, 9, 10, 13-16, 33, 36, 41 and 45-50 were rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al. in view of Gorfien et al.

In response thereto, applicants filed this petition on October 13, 2011 under 37 CFR § 1.181, requesting a new Office action of October 5, 2011.

#### DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on October 13, 2011, applicants state "A new Action is requested, with the date for response re-set from the mailing of the new Action, and withdrawal of the Office Action of October 5, 2011, as the Office Action of October 5, 2011 fails to consider the Declaration evidence filed July 6, 2011 (Declaration of Non-Obviousness Under 37 C.F.R. s103 of Raymond Field)." Applicants further point out "In not considering the earlier presented evidence, the Office Action of October 5, 2011 is incomplete and a new Action is requested with the date re-set from the mailing of the new Action."

Applicant's points are well-taken and are persuasive that the Office action of October 5, 2011 is incomplete.

## **DECISION**

The petition is **GRANTED**.

The Office action mailed October 5, 2011 is hereby vacated and withdrawn. This application will be forwarded to the examiner to take an action consistent with the decision herein, namely issuance of a new and complete Office action wherein the Declaration is addressed in detail.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

A handwritten signature in black ink, appearing to read "JStone", with a stylized, flowing script.

Jacqueline Stone  
Director, Technology Center 1600